

**REMARKS**

This is a full and timely response to the outstanding Office Action mailed May 4, 2004. Upon entry of the foregoing amendments in this response, claims 6 and 13 have been canceled and claims 1 and 8 have been amended herein. Support for the amendments to claims 1 and 8 can be found in the specification and figures, for example but not limited to, Figure 5. Upon entry of this response, claims 1-5, 7-12, and 14-15 remain pending in the present application.

In the Office Action, claim 15 has been allowed; claims 8 and 10-12 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Dalebout (5,637,059); and claims 1-5, 7, 9, and 14 stand rejected under 35 U.S.C. § 103(a) as being obvious over Henderson et al. (6,712,709) in view of Dalebout (5,637,059). Applicants respectfully traverse all of the rejections of the Office Action. Applicants thank the Examiner for noting the allowable material of claim 15. Reconsideration and allowance of the application and presently pending claims 1-5, 7-12, and 14 are respectfully requested.

**I. Response to Drawing Objections****A. Drawings**

The drawings are objected to for not depicting the first and second legs hingeably coupled to an upper portion of the "L" bracket as specified in Applicants claims 6 and 13. Applicants have canceled claims 6 and 13 and

HAYES SOLOWAY P.C.  
130 W. CUSHING ST.  
TUCSON, AZ 85701  
TEL. 520.882.7623  
FAX. 520.882.7643

175 CANAL STREET  
MANCHESTER, NH 03101  
TEL. 603.668.1400  
FAX. 603.668.8567

request that the Examiner withdraw the objection to the drawings under 37 CFR 1.83(a).

## II. Response to Claim Rejections Based On Anticipation

In the Office Action, claims 8 and 10-12 have been rejected under 35 U.S.C. § 102(b). Specifically, these claims have been rejected as being anticipated by U.S. Patent No. 5,637,059 to Dalebout (hereafter, "Dalebout").

As the examiner is aware, "Anticipation can only be established by a single prior art reference which discloses each and every element of the claimed invention." *Structural Rubber Products Co. v. Park Rubber Co.*, 749 F.2d 707, 223 USPQ 1264 (Fed. Cir. 1984). Further, "Absence from a cited reference of any element of a claim of a patent negates anticipation of that claim by the reference." *Kloster Speed Steel AB v. Crucible, Inc.*, 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986), *on rehearing*, 231 USPQ 160 (Fed. Cir. 1986). Thus, if even a single element found in Applicants claim is not identically and exactly disclosed in prior art relied upon by the Examiner, the Examiner's rejection of the claims under 35 USC 102(b) is improper.

Applicants respectfully submit that the Dalebout reference fails to disclose all elements of the rejected claims for the reasons that follow.

### A. Claim 8

Independent claim 8 reads:

A canine training base, comprising:

HAYES SOLOWAY P.C.  
130 W. CUSHING ST.  
TUCSON, AZ 85701  
TEL. 520.882.7623  
FAX. 520.882.7643

175 CANAL STREET  
MANCHESTER, NH 03101  
TEL. 603.668.1400  
FAX. 603.668.8567

a bracket having a first portion for contacting a plank rotatable about the bracket and a second portion having an edge spaced from the first portion;

a first leg having a distal end and a proximal end, the first leg being rotatably coupled to the bracket about a first pivot point located in proximity to the proximal end of the first leg *wherein the first leg rotates perpendicular to the rotation of the plank*; and

a second leg having a distal end and a proximal end, the second leg being rotatably coupled to the bracket about a second pivot point located in proximity to the proximal end of the second leg *wherein the second leg rotates perpendicular to the rotation of the plank*, the first leg and the second leg being rotatable between a first position in which the edge of the bracket contacts a ground surface and a second position in which the distal ends of the first leg and the second leg contact the ground surface.

*(Emphasis Added)*

Applicants respectfully submit that Dalebout fails to disclose at least the above-emphasized element of claim 8. Dalebout does not disclose the legs of the plank rotating in a direction *perpendicular* to the rotation of the plank. Dalebout discloses the rotation of the legs (16, 20) in the direction of the platform 12. Dalebout does not disclose the platform 12 rotating about the legs. In addition, the legs rotate in the direction of the platform 12 and not in a direction perpendicular to the platform 12. Applicants amended claim 8 recites, "wherein the first leg rotates perpendicular to the rotation of the plank" and "wherein the second leg rotates perpendicular to the rotation of the plank," which Dalebout does not disclose. Additionally, as discussed later herein relative to claim 1, neither Henderson nor Dalebout disclose amended claim 8 either individually or in combination.

HAYES SOLOWAY P.C.

130 W. CUSHING ST.  
TUCSON, AZ 85701  
TEL. 520.882.7623  
FAX. 520.882.7643

175 CANAL STREET  
MANCHESTER, NH 03101  
TEL. 603.668.1400  
FAX. 603.668.8567

As a result of at least the above mentioned, Applicants respectfully submit that claim 8 is allowable and allowance is respectfully requested.

**B. Claims 9-12 and 14**

Applicants respectfully submit that since claims 9-12 and 14 depend on independent claim 8, claims 9-12 and 14 contain all limitations of independent claim 8. Since independent claim 8 should be allowed, as argued above, pending dependent claims 9-12 and 14 should be allowed as a matter of law for at least this reason. In re Fine, 5 U.S.P.Q. 2d 1596, 1608 (Fed. Cir. 1988).

**1. Claim 11**

In addition to the above mentioned, Dalebout does not disclose the first and second stoppers welded to the second portion of the bracket as recited in claim 11. On page 3, lines 2-3, the Examiner refers to Dalebout's locking pins 46, 47. However, the locking pins 46, 47 of Dalebout are not welded to wall members 38, 40. The Examiner's rejection of the claims under 35 USC 102(b) is thus improper. Therefore, Applicants respectfully submit that claim 12 should be allowed. Additionally, as discussed later herein relative to claim 4, neither Henderson nor Dalebout disclose claim 11 either individually or in combination.

HAYES SOLOWAY P.C.  
130 W. CUSHING ST.  
TUCSON, AZ 85701  
TEL. 520.882.7623  
FAX. 520.882.7643

175 CANAL STREET  
MANCHESTER, NH 03101  
TEL. 603.668.1400  
FAX. 603.668.8567

### III. Response To Claim Rejections Based On Obviousness

In the Office Action, independent claims 1-5, 7, 9, and 14 have been rejected under 35 U.S.C. § 103(a). Specifically, these claims have been rejected as being unpatentable over U.S. Patent No. 6,712,709 to Henderson *et al.* (hereafter "Henderson") in view of U.S. Patent No. 5,637,059 to Dalebout (hereafter "Dalebout").

In order for a claim to be properly rejected under 35 U.S.C. § 103, the combined teachings of the prior art references must suggest all features of the claimed invention to one of ordinary skill in the art. *See e.g. In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981). Applicants respectfully submit that the combined teachings of the above references fail to disclose, teach, or suggest all elements of the preliminarily rejected claims 1-5, 7, 9, and 14.

#### A. Claim 1

Independent claim 1 reads:

A teeter-totter, comprising:  
 an elongated plank; and  
 a base coupled to the plank, the base having a first leg and a second leg rotatably coupled to a bracket *wherein the first leg and second leg rotate perpendicular to the rotation of the teeter-totter*, the first leg and the second leg rotatable from a first position to a second position, the height of the plank from a ground surface being less when the first leg and the second leg are in the first position than when the first leg and the second leg are in the second position.

*(Emphasis Added)*

HAYES SOLOWAY P.C.  
 130 W. CUSHING ST.  
 TUCSON, AZ 85701  
 TEL. 520.882.7623  
 FAX. 520.882.7643

175 CANAL STREET  
 MANCHESTER, NH 03101  
 TEL. 603.668.1400  
 FAX. 603.668.8567

Applicants respectfully submit that Henderson in view of Dalebout fails to disclose, teach or suggest at least the above-emphasized element of claim 1. Neither Henderson nor Dalebout disclose, teach or suggest the legs of the teeter-totter rotating in a direction *perpendicular* to the rotation of the teeter-totter. The legs of Henderson do not rotate. Even if one skilled in the art at the time of the invention were to combine the teachings of Dalebout with the teachings of Henderson, which Applicants do not concede, the rotation of the legs would not be in a direction perpendicular to the rotation of the teeter-totter. Dalebout discloses the rotation of the legs 16, 20 in the direction of the platform 12. Dalebout does not disclose, teach or suggest the platform 12 rotating about the legs. Therefore, even if one skilled in the art at the time of the invention were motivated to combine the teachings of Dalebout with the teaching of Henderson, which Applicants do not concede, the rotation of the legs would be in the direction of the platform 12 and not in a direction perpendicular to the platform 12. Applicants amended claim 1 recites, "the first leg and second leg rotate to the rotation of the teeter-totter," which is not disclosed, taught, or suggested by either Henderson or Dalebout, either individually or in combination.

As a result of at least the above mentioned, Applicants respectfully submit that claim 1 is allowable and allowance is respectfully requested.

HAYES SOLOWAY P.C.  
130 W. CUSHING ST.  
TUCSON, AZ 85701  
TEL. 520.882.7623  
FAX. 520.882.7643

175 CANAL STREET  
MANCHESTER, NH 03101  
TEL. 603.668.1400  
FAX. 603.668.8567

**B. Claims 2-5 and 7**

Applicants respectfully submit that since claims 2-5 and 7 depend on independent claim 1, claims 2-5 and 7 contain all limitations of independent claim 1. Since independent claim 1 should be allowed, as argued above, pending dependent claims 2-5 and 7 should be allowed as a matter of law for at least this reason. In re Fine, 5 U.S.P.Q. 2d 1596, 1608 (Fed. Cir. 1988).

**1. Claim 2**

In addition to the above mentioned, neither Henderson nor Dalebout disclose, teach or suggest the "L" bracket as shown in Applicants specification. On page 4, line 8, the Examiner recites that it would be obvious to one of ordinary skill in the art to provide the "L" shaped bracket as disclosed by Applicants. Neither Henderson nor Dalebout disclose an "L" bracket and the Examiner provides no motivation for using an "L" bracket. Applicants claimed bracket provides a means for coupling the legs to the teeter-totter, which allows for compact storage while also providing structural support when used in the unfolded position. Neither Henderson nor Dalebout disclose, teach or suggest that an "L" bracket or suggest that an "L" shaped bracket would provide transverse and longitudinal support specific for the requirements of Applicants invention.

Therefore, Applicants respectfully submit that claim 2 should be allowed.

HAYES SOLOWAY P.C.  
130 W. CUSHING ST.  
TUCSON, AZ 85701  
TEL. 520.882.7623  
FAX. 520.882.7643

175 CANAL STREET  
MANCHESTER, NH 03101  
TEL. 603.668.1400  
FAX. 603.668.8567

## 2. Claim 4

In addition to the above mentioned, neither Henderson nor Dalebout disclose, teach or suggest the first and second stoppers welded to a lower portion of an "L" shaped bracket as recited in claim 4. Neither Henderson nor Dalebout disclose, teach or suggest an "L" bracket to provide transverse and longitudinal support specific for the needs of Applicants invention as discussed in claim 2 above. In addition, neither Henderson nor Dalebout discloses, teaches or suggests welding the first and second stopper to the "L" bracket. On page 4, line 1-2, the Examiner refers to the Dalebout locking pins 46, 47. However, if the locking pins 46, 47 were welded to wall members 38, 40, which Dalebout does not disclose, teach or suggest the adjustable bench would not be adjustable in the manner disclosed by Dalebout. The teachings of Dalebout do not disclose, teach or suggest, as the Examiner submits, welding the first and second stoppers to the lower portion of the "L" bracket. Neither Henderson nor Dalebout disclose, teach or suggest welding the first and second stopper to the "L" bracket.

Therefore, Applicants respectfully submit that claim 4 should be allowed.

## 3. Claim 5

Applicants respectfully submit that since claim 5 depends on claim 2, claim 5 contains all limitations of claim 2. Since claim 2 should be allowed, as

HAYES SOLOWAY P.C.

130 W. CUSHING ST.  
TUCSON, AZ 85701  
TEL. 520.882.7623  
FAX. 520.882.7643

175 CANAL STREET  
MANCHESTER, NH 03101  
TEL. 603.668.1400  
FAX. 603.668.8567



argued above, pending dependent claim 5 should be allowed as a matter of law for at least this reason. In re Fine, 5 U.S.P.Q. 2d 1596, 1608 (Fed. Cir. 1988).

**IV. Prior Art Made of Record**

The prior art made of record has been considered, but is not believed to affect the patentability of the presently pending claims.

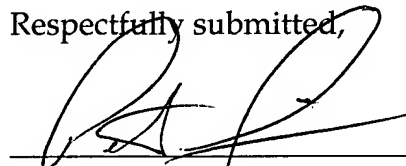
HAYES SOLOWAY P.C.  
130 W. CUSHING ST.  
TUCSON, AZ 85701  
TEL. 520.882.7623  
FAX. 520.882.7643

175 CANAL STREET  
MANCHESTER, NH 03101  
TEL. 603.668.1400  
FAX. 603.668.8567

**CONCLUSION**

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and rejections have been traversed, rendered moot and/or accommodated, and that presently pending claims 1-5, 7-12, and 14 are in condition for allowance. Favorable reconsideration and allowance of the present application and the presently pending claims are hereby courteously requested. If in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (603) 668-1400.

Respectfully submitted,



Peter A. Nieves  
Attorney for Applicants  
Reg. No. 48,173

Customer. No. 26,812

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on July 2, 2004 at Manchester, New Hampshire.

By: 

HAYES SOLOWAY P.C.  
130 W. CUSHING ST.  
TUCSON, AZ 85701  
TEL. 520.882.7623  
FAX. 520.882.7643

175 CANAL STREET  
MANCHESTER, NH 03101  
TEL. 603.668.1400  
FAX. 603.668.8567